IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3504 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MINESH LAND AND ESTATE CORPORATION

Versus

STATE OF GUJARAT

Appearance:

MR HB SHAH for Petitioner No. 1

MR MB GANDHI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2,4

RULE SERVED for Respondent No. 3/SHR

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/09/2001

ORAL JUDGEMENT

Heard learned advocate Mr. M.B.Gandhi for the petitioner and Mr. Sen, the learned Assistant Government Pleader for the respondent authorities. In this petition, rule was issued by the division bench of this court on 12th July, 1984 and interim relief in terms of para 39 was granted.

In this petition, the petitioner has challenged the orders dated 12th June, 1984, annexure 'L'; order dated 14th June, 1984, annexure "M" and the order dated 31st May, 1984 passed by the competent authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. The respondent authority namely Deputy Secretary, Revenue Department has filed affidavit in reply in this petition and rejoinder thereto has also been filed by the petitioner.

The short question raised in this petition is as to whether the order dated 12th June, 1984 passed by the Dy. Secretary, Revenue Department as well as the order dated 14th June, 1984 passed by the District Development Officer, Ahmedabad and the order passed by the competent authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 dated 31st May, 1984 are in accordance with the directions issued by this court in special civil application no. 3352 of 1980 dated 4th May, 1981 and in Letters Patent appeal No. 274 of 1981 dated 17th February, 1984 or not.

Learned advocate Mr. Gandhi appearing for the petitioner has submitted that while passing the orders impugned in this petition, the respondents have not complied with the directions issued by this court in aforesaid petition as well as the letters patent appeal. According to him, the respondents, while passing the impugned orders, have not taken into account the spirit in which the directions were issued by this Court in aforesaid petition and letters patent appeal no. 274 of 1981. According to Mr. Gandhi, this matter is, therefore, required to be remanded back to the respondent authorities for deciding the matter in terms of the directions issued by this court in aforesaid special civil application as well as the letters patent appeal.

On the other hand, learned Asstt. G.P. Mr. Sen appearing for the respondent authorities has gone through all the three orders passed by the concerned authorities of the respondent and has also read the said orders before this Court. He has also read the directions issued by this Court in aforesaid petition and letters patent. After perusing the orders issued by this court in aforesaid petition as well as the letters patent appeal and also after perusing the orders dated 12th June, 1984, 14th June, 1984 and 31st May, 1984 passed by the respondent authorities, has submitted that the respondent authorities, while passing the impugned orders, have not taken into account the spirit in which

the directions were issued by this Court in aforesaid petition as well as the letters patent appeal. However, Mr. Sen has submitted that if this court will again direct the concerned authority to reconsider the matter, then the authority will again reconsider the matter while keeping in view the directions issued by this court in aforesaid petition as well as the letters patent appeal.

I have considered the submissions made by the learned advocates for both the sides. I have also considered the orders passed by this court in special civil application no. 3351 of 1980 dated 4th May, 1981, internal page 22 running page 56, which are reproduced here as under :

"It cannot be gain said that the petition firm has rushed through the construction of the building but I do not think that the petitioner has any criminal intention or any design to flout the provisions of law. It would have been better if the petitioner firm had watched for necessary permission before proceeding with the construction of the building. but embarked as he had on such a project which required a huge investment of as many as 20 lakhs of rupees, he could not have waited indefinitely in these days of searing prices.The delay in construction might have exposed him to greater investment and risk. If in the circumstances,he proceeded with the project, ill advised though he was, it should not be treated as a blatant and flagrant breach of law. the authorities of the State Government should sympathetically view the case of the petitioner firm. I am told that the Managing of the firm before he joined this reas (real) estate business was a professor in Economics in a College and it is beyond my comprehension as to what prompted him to join this business, which is frout with dangerous consequences and great risk of fluctuating fortunes on account of many restrictive pieces of legislation curbing the activities of persons engaged in this business.

Anyway, in view of what has been stated above, I think and hope that the competent authorities of the State Government will review the entire case and regularize the same by condoning the defects and remedies found in the case on such permissible terms and conditions as they may think fit in the circumstances of the case. With

this recommendation, I direct that respondents will review the case and rectify the defects and regularize the case on such terms and conditions as they might think fit. the result is that the rule is made absolute accordingly. "

The observations made by the Division Bench of this Court in the judgment dated 17th February, 1984 in letters patent appeal no. 274 of 1981 in para 13 and 14 of the judgment (running page 85 and 86, internal page 24-25) are reproduced here as under:

"13. While we fully agree with the learned Single Judge that this is a case where the authorities may sympathetically consider the case for regularization subject to appropriate terms and conditions if that would be possible in law, we would also direct that this has to be done very expeditiously. The question of considering the regularization under the Land Revenue Code by the Collector concerned (the third respondent has the power of the collector delegated in this regard) would be taken up independent of the question of regularization under the Urban Land (Ceiling and Regulation) Act so as to enable an expeditious decision to be reached on both these matters. It is based on these also that the Commissioner of Police, the 2nd Respondent will have to consider the question of issue of licence under rule 103 subject of course to consideration of all other questions that may have to be relevant in granting the licence. We are only interfering to the extent that while the court may recommend condonation subject to the relevant rules of law it may not be open to this court to direct the grant of licence or permission under the relevant laws. To that extent, the judgment of the learned single Judge is modified.

14. We once again reiterate the need for expeditious attention to this matter by the authorities concerned. The questions arising under the Land Revenue Code and that under the Urban Land (Ceiling and Regulation) Act will be simultaneously considered and the decisions taken within a period of one month from this date and the decision by the commissioner of Police take within 15 days thereafter. In case the appellants are unable to take decisions within the time permitted by this judgment, they are free to

apply for extension for time. We also direct that licence to run cinema to be extended by the 2nd respondent for a period upto 2nd April, 1984. "

Upon perusal of the impugned orders passed by the respondent authorities dated 12th June, 1984; 14th June, 1984 and 31st May, 1984 as well as the directions issued by this court in special civil application no. 3351 of 1980 as well as in letters patent appeal no. 274 of 1981, according to my view, the respondent authorities, while passing the aforesaid impugned orders, have not taken into account the spirit and the back ground in which the directions were issued by this court in aforesaid petition as well as the letters patent appeal. I am of the view that instead of taking the sympathetic approach as has been directed by this court in aforesaid petition and the letters patent appeal, the respondents have taken legal and technical approach. Thus, the direction issued by this court in aforesaid petition as well as the letters patent appeal have not been followed by the respondents in letter and spirit. Therefore, according to my opinion, all these three orders are required to be quashed and set aside with a direction to the concerned authority to reconsider the matter in light of the observations made and the directions issued by this court in aforesaid petition and letters patent appeal. It is also necessary to note that the order passed by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 dated 31st May, 1984 is now not required to be reconsidered in view of the fact that the ULC Act, 1976 has been repealed with effect from 1st April, 1999 and, therefore, now there is no need to reconsider the matter again by the competent authority under the ULC Act, 1976.

Therefore, in the result, this petition is allowed. The order passed by the Deputy Secretary, Revenue Department, State of Gujarat dated 12th June, 1984 and the order passed by the District Development Officer Ahmedabad dated 14th June, 1984 and the order dated 31st May, 1984 passed by the competent authority under the ULC Act, 1976 are hereby quashed and set aside with a direction to the Deputy Secretary Revenue department, State of Gujarat and the District Development Officer, Ahmedabad to reconsider the matter again and to decide the same again in respect of the disputed land in question belonging to the petitioner after considering the relevant observations made by this Court in aforesaid petition as well as the letters patent appeal and to sympathetically consider the case of the petitioner and pass appropriate orders keeping in view the observations

made and the directions issued by this court in special civil application no. 3351 of 1980 dated 4th May, 1981 and the directions issued by this court in letters patent appeal no. 274 of 1981 dated 17th February, 1984 and to pass appropriate orders after reconsidering the matter as directed by this court in aforesaid special civil application as well as the letters patent appeal after giving reasonable opportunity of hearing to the petitioner. With these observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs.

13.9.2001. (H.K. Rathod,J.)
Vyas